

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**


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INNOVATION VENTURES, LLC; LIVING	:	
ESSENTIALS, LLC; and INTERNATIONAL IP	:	
HOLDINGS, LLC,	:	
	:	12 Civ. 5354 (KAM) (RLM)
Plaintiffs,	:	
	:	[PROPOSED] CONSENT
-against-	:	JUDGMENT AND PERMANENT
	:	INJUNCTION
ULTIMATE ONE DISTRIBUTING CORP., et al.,	:	
	:	
Defendants.	:	
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On consent of Plaintiffs Innovation Ventures, LLC, Living Essentials, LLC, and International IP Holdings, LLC (together, “Living Essentials”) and Defendants Joseph Shayota, Adriana Shayota, and Tradeway International, Inc. d/b/a Baja Exporting (collectively, the “Baja Defendants”), it is hereby ORDERED, ADJUDGED and DECREED:


1. For purposes of this injunction, the “5-hour ENERGY® Marks” are:

- “5 HOUR ENERGY” (Registration No. 3,003,077);
- “5-HOUR ENERGY” (Registration No. 4,004,225);

-  (Registration No. 4,104,670);

-  which includes the wording “5-hour ENERGY” in black outlined in yellow, below which are the words “EXTRA STRENGTH” in yellow, along with a person in black silhouette, outlined in yellow, shown in an athletic pose adjacent to an uneven landscape, with the sky depicted in transitioning colors from black to red as the sky meets the landscape (Registration No. 4,116,951);

- , commonly referred to as “Running Man,” (Registration No. 3,698,044); and

-  which includes the wording “5-hour ENERGY” in black outlined in yellow, along with a person in black silhouette, outlined in yellow, shown in an athletic pose adjacent to an uneven landscape, with the sky depicted in transitioning colors from red to yellow as the sky meets the landscape (Registration No. 4,120,360).

2. For purposes of this injunction, the “5-hour ENERGY® Trade Dress” is the distinctive packaging used to distinguish 5-hour ENERGY® products in the marketplace and which consumers associate strongly with the products. The packaging is shown as follows:



3. For purposes of this injunction, the “5-hour ENERGY® Copyright” is United States Copyright Registration Number TX 6-833-514 for the “Caution” label used on the 5-hour ENERGY® bottle. The copyrighted work reads as follows:

CAUTION: Contains about as much caffeine as a cup of coffee. Limit caffeine products to avoid nervousness, sleeplessness, and occasionally rapid heartbeat. You may experience a Niacin Flush (hot feeling, skin redness) that lasts a few minutes. This is caused by Niacin (Vitamin B3) increasing blood flow near the skin.

4. The Baja Defendants, their agents, servants, employees, affiliates, or any other person in active concert and participation with them, are permanently enjoined from:

- a. using any of the 5-hour ENERGY® Marks (or any marks confusingly similar thereto) on any product, whether authentic or counterfeit, in connection with the manufacture, sale, offer for sale, distribution, advertisement, or any other use of dietary supplements;
- b. using any logo, trade name, or trademark confusingly similar to any of the 5-hour ENERGY® Marks which may be calculated to falsely represent or which has the effect of falsely representing that the services or products of the Baja Defendants or of others are sponsored by, authorized by, or in any way associated with Living Essentials;
- c. infringing any of the 5-hour ENERGY® Marks, the 5-hour ENERGY® Trade Dress, or the 5-hour ENERGY® Copyright;
- d. falsely representing themselves as being connected with Living Essentials or sponsored by or associated with Living Essentials, or engaging in any act which is likely to cause the trade, retailers, or members of the

- purchasing public to believe that they or the other defendants are associated with Living Essentials;
- e. using any reproduction, counterfeit, copy, or colorable imitation of any of the 5-hour ENERGY® Marks in connection with the publicity, promotion, sale, or advertising of dietary supplements;
 - f. affixing, applying, annexing, or using in connection with the sale of any goods, a false description or representation, including words or other symbols tending to falsely describe or represent those goods as being 5-hour ENERGY® and from offering such goods in commerce;
 - g. buying, selling, transferring (other than to Living Essentials or law enforcement officials), altering, or destroying any products, whether authentic or counterfeit, with the 5-hour ENERGY® Marks;
 - h. diluting any of the 5-hour ENERGY® Marks; and
 - i. assisting, aiding, or abetting any other person or entity in engaging in or performing any of the activities referred to in subparagraphs (a) through (h) above.

5. In addition to other remedies, including damages, for contempt of this Permanent Injunction, in the event of breach or violation of the terms of this Permanent Injunction by any of the Baja Defendants, their agents, servants, employees, affiliates, subsidiaries or any other person in active concert and participation with them, Living Essentials is entitled to a preliminary and permanent injunction against the breaching conduct solely upon a showing of a likelihood of success of establishing that such a breach occurred. Living Essentials and the Baja Defendants each agree that jurisdiction and venue for such an action exist in this District Court,

and the Baja Defendants waive any and all defenses based on personal jurisdiction and venue and submit to the jurisdiction of this court for purposes of entering this consent judgment. The Baja Defendants waive its defenses to personal jurisdiction and venue in the present action as well, notwithstanding its pending motion to dismiss.

6. The Baja Defendants hereby consent to this Court's exercise of personal jurisdiction and to venue in this district, and any objections the Baja Defendants previously asserted as to personal jurisdiction and venue are hereby waived.

7. This Consent Judgment is entered pursuant to Rule 58 of the Federal Rules of Civil Procedure, and this action is hereby dismissed without prejudice, against only the Baja Defendants, without costs or attorneys' fees.

8. This District Court shall retain jurisdiction over this action for purposes of the implementation of, or any disputes arising out of, this Consent Judgment or the settlement agreement between Living Essentials and the Baja Defendants dated as of November 7, 2013 (the "Settlement Agreement").

9. This District Court shall also retain jurisdiction for purposes of entry of the further consent judgment entered into between Living Essentials and the Baja Defendants pursuant to the Settlement Agreement, which counsel for Living Essentials is presently holding in escrow pending the Baja Defendants' satisfactory performance of their obligations under the Settlement Agreement.

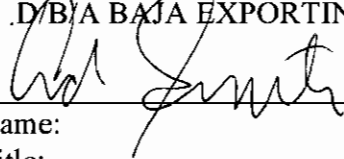
10. In any action to enforce this Consent Judgment or the Settlement Agreement, the prevailing party, in addition to any award of damages or injunctive relief, shall be entitled to an award of reasonable attorney's fees.

11. Signatures transmitted electronically or by facsimile shall be deemed original.

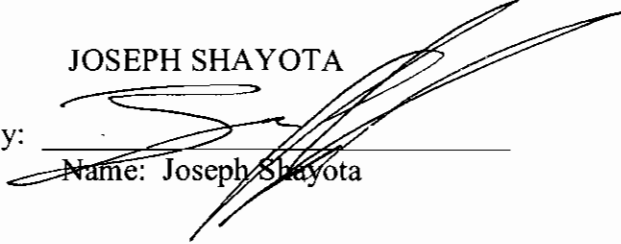
Dated: November 7, 2013

CONSENTED AND AGREED TO BY:

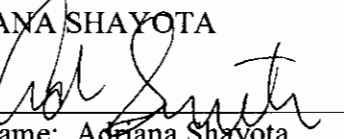
TRADEWAY INTERNATIONAL, INC.
D/B/A BAJA EXPORTING

By: 
Name:
Title:

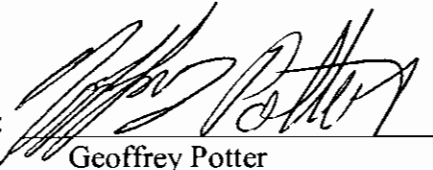
JOSEPH SHAYOTA

By: 
Name: Joseph Shayota

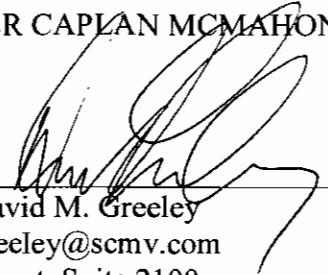
ADRIANA SHAYOTA

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IT IS SO ORDERED.

HONORABLE KIYO A. MATSUMOTO
UNITED STATES DISTRICT JUDGE